

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

CINDY LOU DAY,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

CV 12-154-M-DLC-JCL

FINDINGS &  
RECOMMENDATION

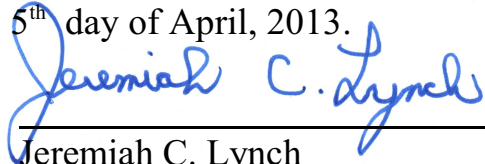
In November 2012, the Court issued an order establishing a briefing schedule in this case. Dkt. 14. The order directed Plaintiff Cindy Lou Day, who is proceeding pro se, to file a motion for summary judgment and supporting brief on or before February 12, 2013. Dkt. 14. As of March 14, 2013, however, Plaintiff had not complied with the Court's directive. Defendant thus moved to dismiss the case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute or comply with the Court's order. Dkt. 16.

The Court then issued a show cause order, giving Plaintiff until March 28, 2013, to either: (1) show cause why this action should not be dismissed for failure to comply with the Court's scheduling order or otherwise prosecute this action, or (2) file a motion for summary judgment and supporting brief. Dkt. 17. The Court expressly cautioned Plaintiff that if she failed to do one of those two things, the Defendant's motion to dismiss would be granted and this case would be dismissed with prejudice. Dkt. 17.

As of today's date, however, Plaintiff has not complied with the Court's order. She has not filed a motion for summary judgment, requested additional time, or made any attempt to show cause why this case should not be dismissed. Under the circumstances, dismissal is appropriate pursuant to Fed. R. Civ. P. 41(b) based on Plaintiff's failure to comply with the Court's Orders or otherwise prosecute the case. *See e.g. Hells Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683, 689 (9<sup>th</sup> Cir. 2005) (recognizing that a courts may dismiss under Rule 41(b) sua sponte); *Henderson v. Duncan*, 779 F.2d 1421 (9<sup>th</sup> Cir. 1986) ("The district court has the inherent power sua sponte to dismiss a case for lack of prosecution."). The Court has considered all of the relevant factors, and finds that they weigh in favor of dismissal. *See Henderson*, 779 F.2d at 1423 (identifying factors). Accordingly,

IT IS RECOMMENDED that this case be DISMISSED with prejudice pursuant Fed. R. Civ. P. 41(b) in light of Plaintiff's failure to comply with the Court's Orders and failure to prosecute. Plaintiff has until April 22, 2013, within which to file any objections to the Court's recommendation.

DONE and DATED this 5<sup>th</sup> day of April, 2013.

  
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Jeremiah C. Lynch  
United States Magistrate Judge